IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 22.02.2007

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice N.PAUL VASANTHAKUMAR

W.A. No.2581 of 2002
and
WP Nos.35467 & 35468/2002

Southern Railway License
Porters Union (Reg. No.
2377/MDS),
Rep. by its General Secretary,
52, Cooks Road,
Chennai-600 012. ...1st appellant/1st Petr.
in the Appeal and WPs.

A.Parthasarathy ...2nd appellant in the WA.

A.Chittirai ...2nd petitioner in the W.Ps.

vs.

1. Union of India,
rep. by the Chairman,
Railway Board,
New Delhi.

2. The Divisional Railway Manager,
(Commercial),
Madras Division,
Southern Railway,
Park Town,
Madras-600 003. ... Respondents in both WA and
Writ petitions.

W.A. No.2581 of 2002:- Appeal under Clause 15 of Letters Patent as against the order of the learned single Judge, dated 14.06.2002, made in W.P. No.1359 of 1995.

W.P. Nos.35467 & 35468 of 2002:- Petitions filed under Article 226 of the Constitution of India for the issuance of writ of declaration and writ of mandamus as stated therein.

For Appellants/Petitioners: Mr.NGR.Prasad,
for M/s.Row & Reddy.

For Respondents in WA/WPs: Mr.R.Thiyagarajan,
Senior Counsel for
Mr.V.G.Suresh Kumar.

Common Judgment

(Judgment of the Court, delivered by P.SATHASIVAM, J.)

Southern Railway License Porters Union through its General Secretary, Chennai-12, and one A.Parthasarathy, have filed W.A. No.2581 of 2002, questioning the order of the learned single Judge, dated 14.06.2002, made in W.P. No.1359 of 1995, in and by which, the learned Judge dismissed the said Petition challenging the tender Notification issued by the Southern Railway calling for applications from interested parties for issuing of Self-help Trollies for the use of passengers, retrieval and maintenance of the same at Madras Central Station for a period of one year.

2. The very same Union and one A.Chittirai have filed W.P. No.35467 of 2002, praying for the issuance of a writ of declaration to declare the action of the respondents in calling for tenders from Agencies to supply and maintain self service trolleys as per their notification published in

the Hindu Daily, dated 17.08.2002, as illegal and unconstitutional. They have also filed W.P. No.35468 of 2002 praying to issue a writ of mandamus, directing the Railway Administration to consider for absorption of all the licensed porters working with the second respondent as directed by the Supreme Court in National Federation of Railway Porters case reported in 1995 Supp (3) SCC 152.

3. Since the issues raised in all the three matters are interconnected to each other, they are being disposed of by the following Common Judgment.

4. Even at the outset, in respect of the Union's prayer in Writ Petition No.35468 of 2002 for regularisation of services of the Porters in the Railways, we observe that, in view of the fact that the same cannot be done and no argument was advanced on this aspect, the said writ petition is liable to be dismissed.

5. According to the appellants/petitioners, their Union represents porters working in various Railway Stations of Southern Railway. In 1995, at the time of filing of W.P. No.1359 of 1995, in Madras Central Station alone, there were 607 licensed porters. Licence is granted on the application made by the porters and thereafter they have to pay Rs.5/- per month to the Railways. They are given Uniforms and

their working is regulated by the Railway Authorities. The Railways have even regulated the rates that they should charge for carrying the loads either on their heads or on the big trolleys provided by the Railways.

They come from the lowest and poorest stratum of the society and try to earn livelihood to maintain their families through the hard work of carrying luggage which is the only occupation they know. Most of them are illiterates and the porter job is a family profession handed down for generations for most of them. The Railway Authorities also recognised this and licenses are also issued to heirs, if the porters die or leave the job due to ill health. While so, now, the respondents have taken steps to introduce trolleys to be operated by others who will be licensed. The trolleys called self service trolleys are really not so. The system of operation will be that the passengers will have to pay Rs.2/- to the person who will be licensed by the Railways. Naturally, the licencee will have to employ persons to issue and collect back the trolleys. In that process, the earnings of the porters will go down and they will even lose their livelihood. The respondents have issued a notice in Indian Express, Madras Edition, dated 24.1.1995, calling for tenders to grant licence to operate the trolleys. The action of the respondents in calling for the tenders and deciding to grant licence to others amounts to depriving the Porters of their livelihood and such course

is violative of the fundamental rights of the porters guaranteed to them under Articles 14, 19 (1)(g) and 21 of the Constitution. Further, the Railways have not introduced such a system anywhere else in the Southern Railway or in the Country. Hence, their action is also discriminatory. The porters undoubtedly belong to a weaker section of the society. The respondents cannot take any action in disregard to the Directive Principles of State Policy enshrined in Article 39(a) to secure adequate means of livelihood and Article 46 to promote with special care the economic interests of weaker sections of the people and to protect them from social injustice and all forms of exploitation.

6. Coming to the case of the Railways, in their affidavit filed in April, 1995, they admitted that there are 607 Porters in the Madras Central Station and they have to pay Rs.5/- as licence fee to the Railways since they have been permitted to be engaged as Porters to carry the luggage of the passengers. They also admitted that the Railways provide one turban, one shirt per year and also one identity badge with licence number for the purpose of identifying the porter. The porters are engaging themselves in the work of carrying the passengers' luggage and the Railways, in order to have an orderly system, introduced the licensing system, accordingly, licence fee of Rs.5/- per month was fixed and

the same is collected by the Railways. At the same time, it does not prohibit the Railways from improving the amenities for the travelling public by introducing several modern methods and the petitioners have no locus standi to question the same.

About 200 Trolleys have been provided by the Railways for the convenience of the passengers. Those trolleys are available in the Railway Station which the passengers can take for loading/unloading their luggage without paying any charge for the same. This system is in vogue for the past five years. However, experience shows that the trolleys could not be maintained properly and, that apart, the passengers, who utilise the trolleys, leave the same in the platform itself, disrupting free movement of passengers in the platform. Taking all these aspects into consideration, the Railway Administration had decided to entrust the trolley service to a private agent with regard to keeping and maintenance of the same at one place. The object of the scheme to engage a private agent was devised with the sole intention of helping the passengers and for the services, a nominal fee of Rs.2/- is fixed per trolley. The passengers can thus use the trolleys for loading their luggage in such a manner without causing any hindrance to other passengers while boarding and alighting from the train. That apart, the agency will be responsible for keeping the trolleys in a fit and good condition. Further, the job of the Porters is

also not going to be interfered with nor stopped by the administration. The introduction of the system is only in addition to the existing system of carrying the luggage by the porters over their heads or by trolley and not as a substitute one. Moreover, it is a policy decision for the welfare of the travelling public and as such the petitioners have no grievance and cannot question the policy decision which has been taken solely with the intention to help the travelling public. Ultimately, the Administration prayed for dismissal of the writ petition.

7. The learned Judge, after accepting the stand of the Railways and finding that there is no legal right in the petitioners to prevent the introduction of the trolley system and that even after the trollies are introduced, the porters will not be driven out of work, dismissed the writ petition.

8. Mr.N.G.R.Prasad, learned counsel appearing for the Porters' Union, submitted that the learned Judge should have tested the action of the Railways in deciding to entrust the trolley maintenance with a private agency in the context of the right to livelihood of the licensed porters. By drawing our attention to the decisions of the Supreme Court reported in 1980 (Supp) SCC 601 (Azad Rickshaw Pullers' Union vs. State of Punjab) and 1994 (5) SCC 28

(Kerala S.M.T.FED. v. Kerala T.B.O. Assn.), he contended that every State action should have human face. He further contended that both the Railways Administration and the learned Judge failed to note that, before introducing this facility, the Railways should have weighed the pros and cons as it would directly affect even the marginal livelihood of the licensed porters.

9. On the other hand, Mr.R.Thiyagrajan, learned Senior Counsel for the Railways, submitted that interest of the travelling public is paramount for the Railways and that, in view of fact that there is no prohibition in allowing the porters to continue their avocation even after the introduction of trolleys, Court cannot intervene and the learned Judge rightly dismissed the plea of the Union.

10. We have already narrated the admitted factual position, viz., in order to regulate, the Railway Administration introduced licence system, as per which, all the porters, who intend to carry luggage inside the Railway Station, have to pay Rs.5/- per month as licence fee to the Railways. We have also noted that the Railways themselves provide one turban, one shirt per year and also one badge with licence number for the purpose of identifying the Porter. The present system shows that the travelling public are free to carry the luggage if they so desire and if they

want, they can utilise the services of the porters by paying portage as prescribed by the Railway Administration. It is admitted that, if there is any dispute, the passengers are free to make complaint to the police or Railway Administration. It is the stand of the Railways that they provide several facilities to the travelling public and in order to help more and to regulate the trollies which are available even now, they intend to entrust the same to a private Agency. It is the apprehension of the Union that if such trolleys are entrusted to a contractor, necessarily, they have to engage several persons to use those trollies, in such circumstances, it would affect the livelihood of the licensed porters. With his background, before proceeding further, we deem it pertinent to mention that we have no contra opinion to the conclusion of the learned Judge that introduction of trolley system and other methods by the Railways to better serve the passengers cannot be challenged. Now, the only issue before us for consideration is as to whether the Railways is justified in entrusting the system to a private contractor.

11. While considering the said issue, it is relevant to refer to the two decisions of the Supreme Court heavily relied on by Mr.N.G.R.Prasad, learned counsel for the appellants/petitioners.

12. In 1980 Supp. SCC 601 (cited supra), considering various difficulties faced by rickshaw pullers in getting benefits under Punjab Cycle Rickshaws (Regulation of Licences) Act, 1976, the Hon'ble Supreme Court issued several directions in order to make the provisions viable. It is seen that the impugned legislation of the Punjab Government had a supportive financial arrangement and many rickshaw pullers had been baled out of their economic bondage, however, some hitch somewhere prevented several desperate rickshaw-drivers getting the benefit, which drove them upto Supreme Court. It is further seen that by several directions of the Court and the role played by the counsel appearing on either side, the grievance of the petitioners as well as other rickshaw drivers were duly considered and solved by the Government. While lauding the said scheme, the Hon'ble Supreme Court has commended, 'after all, the quality of life of the weakest in society is the true measure of social justice'.

13. The other decision relied on by Mr.NGR.Prasad is the one reported in 1994 (5) SCC 28 (cited supra). Kerala Trawlnet Boat Operators' Association filed Writ Petitions before the High Court of Kerala, challenging validity of two orders dated 25.06.1990 and 20.06.1992, which provided thus:-

" (1) Bottom - trawling was prohibited altogether for the period of 44 days in the year 1992 by one and all. During the remaining period of the year, bottom-trawling was permitted by one and all within the territorial waters.

(2) Only the boats having a minimum power of 160 HP and a hull length of not less than 43 feet (carrying a minimum length of 500 metres wire rope in the winch drum) shall alone be deemed to be capable of conducting bottom-trawling beyond territorial waters, which means that boats with lesser horse power / or lesser length shall be deemed to be meant for bottom-trawling only within the territorial waters.

In short, the orders created a conclusive presumption of law that boats having lesser length, horse power and fishing gear than prescribed shall be deemed to be meant for bottom - trawling within the territorial waters alone and are incapable of bottom - trawling beyond the territorial waters. The necessary consequence of this conclusive presumption of law provided by the Order was that boats not answering the requirements

prescribed in the First Order were not be
permitted to leave the coast during the
aforesaid period of 44 days. They were
confined to and tied down to the seashore".

The High Court allowed both the Writ Petitions; questioning the same, Kerala S.M.T. Federation filed appeal before the Supreme Court. It is further seen that the Government of Kerala was of the opinion that in the interest of preservation and availability of the fish and to safeguard the economic interests of the weaker sections of the society, viz., traditional fishermen, it is necessary to ban bottom-trawling within the territorial waters during the period of about 44 days in a year. In view of the stand of the Government, the following questions were raised before the Supreme Court;

(a) can it be said that it is acting unreasonably;
and
(b) can it be said that the said temporary ban is not in the interest of general public.

Answering the question in the negative, the Hon'ble Supreme Court observed as follows:-

" 24. ..... We think not. As pointed
out by this Court in State of Kerala

..Vs.. Joseph Antony (1994 (1) S.C.C. 301), Article 46 of the Constitution places an obligation upon the State to promote the economic interest of the weaker sections of the society with special care. The traditional fishermen belong undoubtedly to weaker sections of the society. Already they have been driven below the poverty line, mainly on account of the introduction of the mechanised fishing boats. It is equally relevant to notice that this Court has, in Joseph Antony, upheld a total ban on use of purse seines, ring seines etc. within territorial waters, whereas in this case, we are concerned with a limited ban, i.e., for a period of 44 days in a year. There can be no doubt about its validity. In the specific conditions obtaining in the Kerala State and having regard to the particulars relating to the number of fishermen and the availability of the fish noticed in Joseph Antony, the restrictions imposed by impugned orders appears to be perfectly justified. The said

restrictions serve twin purposes, viz., assuring the livelihood of the traditional fishermen whose number runs into several lakhs and also to ensure that indiscriminate fishing is not indulged in by these trawl-boats within territorial waters.

.....

27. We are also of the opinion that the Government of Kerala is perfectly justified in adopting the attitude that the public interest cannot be determined only by looking at the quantum of fish caught in a year. In other words, production alone cannot be the basis for determining public interest. The Government is perfectly justified in saying that it is under an obligation to protect the economic interest of the traditional fishermen and to ensure that they are not deprived of their slender means of livelihood. Whether one calls it distributive justice or development with a human face, the ultimate truth is that object of all development is the human being. There can

be no development for the sake of development. Priorities ought not to be inverted nor the true perspective lost in the quest for more production. It should also be noticed that bottom-trawling is not being prohibited altogether. ....."

After finding so, Their Lordships concluded that, in the facts and circumstances of the case, the two impugned orders issued under Section 4 of the Kerala Act cannot be said to be illegal or invalid for any of the reasons suggested and ultimately allowed the appeals and the orders of the High Court were set aside.

14. By contrasting the above Case Laws with reference to the factual aspects of the cases on hand, it is clear that,

(a) quality of life of the weakest in society is the true measure of social justice;

(b) it is the bounden duty of the Government to safeguard the economic interests of weaker sections of the Society;

(c) the Government/Railways is under obligation to protect the economic interests of the licensed porters and ensure that they are not deprived of their slender means of livelihood.

15. We are conscious of the fact that it is the bounden duty of the Railways to provide more facilities to the travelling public, which includes more number of trains, better facilities in the platform, waiting room etc. We also agree that the introduction of self-help trolleys for the use of passengers or their friends and relatives is laudable as, undoubtedly, it would be beneficial to the passengers. At the same time, as observed earlier, whenever the Government wants to introduce new scheme, it should also take care of the interest of weaker sections, in the case on hand licensed porters. We have also referred to in the earlier paragraphs of our order that porters in all Railways Stations are being regulated by various orders of the Railway Administration subject to fulfilling certain conditions. The administration issue licences for which, the licensee has to pay a nominal amount (Rs.5/- per month) to the Railway Administration. In turn, the Administration supplies headgear and shirt in a year apart from providing a badge containing licence number. It is also brought to our notice that, in the event of death or ailment of a porter, only his legal heir or nominee alone is permitted to continue the said avocation. In those circumstances and in view of the increase in the number of trains, we are of the view that, while providing better facilities to the travelling public, equally, it is responsibility of the Government/Railway to protect and safeguard the interest of

licensed porters. As rightly pointed out by Mr.NGR.Prasad, if the trolleys are entrusted to a contractor or Agency, they would engage their own people, whose competition with the licensed porters would become inevitable. It is also possible that the contractor/agency may utilise their services by paying nominal amounts and take larger amounts as profit. Such method is undesirable as it would directly affect the marginal livelihood of the licensed porters. It is brought to our notice that the number of passengers using Chennai Central on an average per day is 1,28,201; number of licensed porters at Chennai Central - 607 and at Chennai Egmore - 132; and total number of licensed porters in the State of Tamil Nadu is 1302. It is estimable to note that the Railway issues free pass to the licensed porter and his spouse once a year to travel to any destination in India by Second Class. Considering all the above factual details, more particularly licensed porters are controlled by the Railway Administration to some extent and they are depending upon this profession for their livelihood, and in view of the principles laid down by the Supreme Court in Azad Rickshaw Pullers' Union case and Kerala S.M.T. Federation's case, while making it clear that the Railway Administration is free to introduce and provide all modern and better facilities that are beneficial to the travelling public, we issue the following directions,

(a) The Administration shall not engage any contractor or Private Agency for the maintenance of the trolley system;

(b) They shall earmark a distribution and restoration point for trolleys, which must be accessible to every one and from where passengers can take the trolley and return back the same after the purpose is over.

(c) The travelling public or their friends or relatives are free to use the trolley subject to payment of nominal amount or free of cost with a specific condition that the same should be returned at the place from where it was taken;

(d) Similarly, Licensed Porters shall also be permitted to use the trolleys, if they so desire, on payment of nominal amount or free of cost and with the condition that the trolley is restored to its allotted place;

(e) It is the duty of the Administration to see that no trolley is left abandoned in Platforms obstructing free movement of passengers;

(f) It is the responsibility of the Railway Administration to verify then and there and prohibit unlicensed porters from

getting in and causing mischief.

Writ Appeal No.2581 of 2002 and W.P. No.35467 of 2002 are disposed of with the above directions. W.P. No.35468 of 2002 is dismissed. No costs.

JI.

To

1. The Chairman,
Railway Board,
New Delhi.

2. The Divisional Railway Manager, (Commercial),
Madras Division,
Southern Railway,
Park Town,
Madras-3.